IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

OP.No. 26072 of 1999(D)

PETITIONER:

M. GANGADHARAN, SREEVILASAM,
THRIPERUNTHURA, MAVELIKARA

BY ADV.SRI.B.JAYASANKAR
SRI.K.S.SREEKUMAR
SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)

RESPONDENTS:

TRAVANCORE DEVASWOM BOARD, REPRESENTEDBY ITS SECRETARY, NANTHENCODE, THIRUVANANTHAPURAM

BY ADV. SRI D. SREEKUMAR, SC,
TRAVANCORE DEVASWOM BOARD

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 10/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S. RADHAKRISHNAN & ANTONY DOMINIC, JJ.

O.P. No 26072 of 1999

Dated: 10th July 2007

JUDGMENT

Radhakrishnan, J.

This original petition has been preferred praying to quash Ext. P7 order passed by the Travancore Devaswom Board and also for a direction to the respondent to post the petitioner in the position due to him taking into consideration his karanma right and to disburse the service benefits from 28.05.1983.

2. Family of the petitioner had karanma right in Vazhappilly Devaswom administered by the Travancore Devaswom Board. Father of the petitioner was performing karanma service in the temple. On attaining the age of 60, that is, on 09.07.1979 he retired from service and in his place his son, petitioner herein, was accommodated by the Sub Group Officer, Thiruvalla Group Devaswom. He was performing karanma service in the temple. Service was sought to be terminated on the ground that when he was

appointed he had not attained the age of 18 years and that he was not a member of Marumakkathayam family and that there was no valid order of appointment issued to him. All these questions were subject matter of O.P. No 2048 of 1991. Learned judge of this court after elaborately considering the various contentions raised by the parties entered a finding that the Kerala Service Inam Lands (Vesting and Enfranchisement) Act, 1981 by which the karanma right was abolished would not affect the claim raised by the petitioner since the said Act came into force only on 06.08.1981 and the petitioner was appointed on 10.07.1979. Learned judge also took the view that after the introduction of the Kerala Joint Family Abolition Act, concept of marumakkathayam family was no longer in existence and it could not be said that only marumakkathayam heirs could be entertained in karanma service. Further it was also noticed that the Board had not approved the appointment of the petitioner on the ground that he was appointed by the Sub Group Officer without the knowledge of the Board. Though evidence was tendered in favour of the petitioner, learned judge felt that the matter should be directed to be considered afresh and the original petition was disposed of on 29.09.1998 directing the Board to reconsider the matter

untrammelled by the findings recorded in the judgment. Subsequently petitioner sent a letter dated 12.11.1998. The only ground on which the claim of the petitioner was rejected by the Board was that he was engaged on 10.07.1999 when he had not completed 18 years of age. Hence it was held that termination of service was valid. Further it is also stated that the petitioner has not produced any nomination or succession certificate to prove his claim for karanma right.

3. We heard counsel for the petitioner as well as the Standing Counsel for the Board at length. We notice that many of the legal questions raised were answered in Ext. P2 judgment in O.P. No 2048 of 1991 and the impugned order was passed taking a contrary view to that expressed by this court in the above mentioned judgment even though the Board was directed to consider the matter afresh. The only ground on which the Board sustained the order of termination of service was that the petitioner had not completed 18 years of age when he was engaged on 10.07.1979. We notice that the above stand taken by the Board was based on Rule 23 of the Rules regarding the Recruitment, Service and Conduct of Devaswom Servants which was made in exercise of the powers conferred by

clause (e) of sub-section (2) of Section 35 of the Travancore Cochin Hindu Religious Institution Act as amended by Notification dated 5.10.1977, which reads as follows:

> "The minimum age required for appointment in service either as Karanma or as contingent employee shall be eighteen years. No temple employees, either Karanma or contingent, who has entered service before 1.1.1972 will be retained in service after the completion of his 60th year of age. Temple employees appointed after 1.1.1972 either in Karanma or contingent service will not be retained after completion of his 55th year of age."

Above mentioned rule was made applicable to Karanma holders only with effect from 6.8.1981. Petitioner was appointed on 10.04.1971 and therefore the above mentioned provision would not apply to the petitioner. Division Bench of this court in Travancore Devaswom Board v. Chellappan Pillai (1998 (1) K.L.T 16) considered the effect of Rule 23 of the Rules on Karanma holders and held that they cannot be treated as servants of the Devaswom and they can be treated so only after 6.8.1981 after the promulgation of the Kerala Service Inam Lands (Vesting and Enfranchisement) Act, 1981 by which karanma right was abolished. In such circumstances, we are

of the view that engagement of the petitioner from 10.07.1979 cannot be faulted. If that be so, in the absence of any other claimant petitioner is entitled to hold that right and hence he was rightly engaged by the Sub Group Officer. No other member of the family has staked any superior claim and therefore we have to take that karanma right would enure to the benefit of the petitioner. We are not impressed by the argument advanced by the counsel for the Board that he was engaged by the Sub Group Officer who has no power to engage the petitioner. In our view, being a karanma right holder there is no illegality in engaging the petitioner. We therefore quash Ext P7 order and direct the Board to engage the petitioner as karanma right holder within a period of one month from the date of receipt of a copy of this judgment. Original petition is disposed of as above.

Sd/-

K.S. RADHAKRISHNAN
Judge

Sd/-

ANTONY DOMINIC
Judge

10/07/2007
en/ [true copy]

Appendix

Petitioner's exhibits:

Ext.P1 - True copy of communication No 92 dated 28.5.1983 issued to the petitioner by the Devaswom Office, vazhappally
Ext.P2 - True copy of judgment dt 29.9.1998 of this court in OP 2048 of 1991
Ext.P3 - True copy of representation dated 12.11.1998 made by the petitioner to the respondent
Ext.P4 - True copy of representation dated 2.3.1999 made by the petitioner to the respondent
Ext.P5 - True copy of show cause notice No ROC 803/98/Suit/Misc dated 2.6.1999 issued by the respondent to the petitioner
Ext.P6 - True copy of reply dated 29.6.1999 submitted by the petitioner to the above.
Ext.P7 - True copy of proceedings ROC No 803/98/Misc/Suit dated 26.7.1999 of the respondent

Respondent's exhibits:

Ext. R(a) True copy of order No ROC 1629/83/Mis dated 23.05.1983 of the respondent.
Ext.R(b) - True copy of notification No ROC 2644/72/Misc dated 05.10.1977 issued by the respondent
Ext.R(c) - True copy of Transfer certificate of the petitioner issued by the Mahatma High School, Chennithala

[true copy]